

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:)	
)	
Rome Coal Tar Site)	Proceeding Under Section 122(h)(1)
Rome, Georgia)	of the Comprehensive Environmental
)	Response, Compensation and
)	Liability Act of 1980, 42 U.S.C.
Atlanta Gas Light Company)	Section 9622(h)(1), as amended by
)	the Superfund Amendments and
Respondent)	Reauthorization Act of 1986,
)	Pub. L. No. 99-499.

COST RECOVERY AGREEMENT

This Agreement is made and entered into by the U.S. Environmental Protection Agency ("EPA"), and Atlanta Gas Light Company ("Settling Party"). The purpose of this Agreement is for EPA to recover response costs incurred at or in connection with the Rome Coal Tar Site ("Site") in Rome, Georgia, and to resolve the liability of the Settling Party for such response costs. EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (September 13, 1987).



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This Agreement shall be binding upon EPA and shall be binding upon the Settling Party, its directors, officers, employees, agents, successors and assigns. Each signatory to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party represented by him or her. The Settling Party agrees to undertake all actions required by this Agreement. The Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

WHEREAS, EPA alleges that hazardous substances, pollutants, and/or contaminants as defined in Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. Sections 9601(14) and 9601(33), have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, which response action during May 1985 included the removal and proper disposal of the coal tar and contaminated materials; adding kiln dust to the Site materials to stabilize them; and capping the pit.

WHEREAS, EPA alleges that in performing this response action, response costs have been incurred at or in connection with the Site totalling approximately \$118,249.00 as of May 19, 1988

WHEREAS, EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), and is liable for response costs incurred and to be incurred at or in connection with the ~~the~~ Site;

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WHEREAS, the Settling Party does not admit or deny any of EPA's allegations; and

WHEREAS, EPA and the Settling Party desire to settle certain claims arising from the Settling Party alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact ^{or CMB} ~~or~~ law; *LD*

NOW, THEREFORE, EPA and the Settling Party, in consideration of the promises and covenants herein, and intending to be legally bound hereby, agree as follows:

1. The Settling Party agrees to pay to the Hazardous Substance Superfund a total amount of \$75,000.00 within ten (10) days of the effective date of this Agreement.

2. Payment shall be made by ^{CMB} ~~certified or cashier's~~ check, made payable to "EPA-Hazardous Substance Superfund." The check or checks shall reference the name of the Settling Party and the Site and shall be sent to:

EPA Superfund
Superfund Accounting
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251
ATTN: Collection Officer for Superfund

3. Settling Party shall simultaneously send a copy of its check to Etta Sheldon, Esq., Civil Investigator,:

United States Environmental Protection Agency
Investigation Support Section
Waste Management Division
345 Courtland St., N.E.
Atlanta, GA 30365

4. In addition to any other remedies or sanctions available to EPA, if the Settling Party fails or refuses to comply with any term or condition of this Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA.

5. Subject to Paragraph 6 of this Agreement, upon payment of the amount specified in Paragraph 1 of this Agreement, EPA covenants not to sue or to take any other civil or administrative action against the Settling Party for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for reimbursement of response costs incurred at or in connection with the Site as of ~~May 19, 1988~~ ^{the date of this Agreement.} *DD* *CMB* Such response costs were incurred in connection with the emergency removal and disposal of coal tar and contaminated soil at the Site during May 1985.

6. Nothing in this Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against the Settling Party for:

a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Agreement; or

b) any matters not expressly included in "Covered Matters", including, without limit\ on, any liability for damages to natural resources.

7. Nothing in this Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

8. In consideration of EPA's covenant not to sue, contained in Paragraph 5 of this Agreement, the Settling Party agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at the Site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at the Site.

9. Subject to Paragraph 6 of this Agreement, EPA agrees that by entering into and carrying out the terms of this Agreement, Settling Party will have resolved its liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA and shall not be liable for claims for "Covered Matters."

10. This Agreement shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

11. The Regional Administrator of EPA, Region IV, has determined that the total response costs incurred to date at or in connection with the Site do not exceed \$500,000.00 excluding interest, and that, based upon information currently available to EPA, total response costs at or in connection with the Site are not anticipated to exceed \$500,000.00 excluding interest, in the future.

12. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Party that the public comment period pursuant to Paragraph 10 of this Agreement has closed and that comments received, if any, do not require modification of this Agreement or EPA withdrawal from the Agreement.

IT IS SO AGREED:

BY:

Lee A. Tidwell
Greer C. Tidwell
Regional Administrator
U.S. EPA - Region IV

8/18/88
DATE

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By:

Charles W. Bass, Vice President
Atlanta Gas Light Company

8-17-88
DATE